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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO. 2573, 2574, 3388, 3522 AND  
3517 OF 1997

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes.
2. To be referred to the Reporter or not? Yes.

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3. Whether Their Lordships wish to see the fair copy of the judgement? No.
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No.
5. Whether it is to be circulated to the Civil Judge? No.

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PETROLEUM EMPLOYEES UNION

Versus

O N G C LTD.

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Appearance:

MR. SURESH S. PAKALE, WITH MR BR GUPTA for Petitioners  
in all the aforesaid petitions.

MR. K.M. THAKAR for respondent O.N.G.C.Ltd.  
Respondent no. 1 and Group General Manager, O.N.G.C.  
Ltd. respondent no. 2.

MR. KS ZAVERI, for respondent no. 7 & 12 in Spl.C. A.  
No.2573/97, for respondent no. 6 in Spl.C.A.  
No.3388/97 and for respondent no. 2 and 9 in Spl. C.A.  
No.3517/97.

MS MAMTA VYAS FOR MR. D.D. VYAS, for respondent no. 2  
in Spl. C.A. No.3522/97.  
MR JD AJMERA for Respondent No. 5

No one appears for other respondents in any of these  
petitions despite service.

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CORAM : MR.JUSTICE M.R.CALLA  
Date of decision: 05/09/97

COMMON ORAL JUDGEMENT

Heard learned counsel.

2. All these five Special Civil Applications have been filed against Oil & Natural Gas Corporation (ONGC) by the employees who have been working with different contractors associated with ONGC and all of them claim to be absorbed in ONGC on the basis of the Notifications dated 8th September, 1994 issued by the Ministry of Labour, Government of India in exercise of power conferred under Sub Section (1) of Section 10 of the Contract Labour ( Regulation and Abolition ) Act, 1970. All these Special Civil Applications are, therefore, decided by this common judgment as they involve common question of facts and law.

3. Special Civil Application Nos. 2574/97 and 3522/97 are filed on the basis of Notification dated 9th December 1996 issued by the Ministry of Labour, Government of India in exercise of power conferred under Sub-Section (1) of Section 10 of the Contract Labour (Regulation and Abolition) Act, 1970.

4. Special Civil Application Nos. 2573/97, 3388/97 and 3517/97 are filed on the basis of the Notification dated 8th September, 1994. This Notification dated 8-9-94 covers 13 categories of the employees with regard to whom the contract labour has been sought to be abolished in ONGC.

5. In Special Civil Application No. 2573 the petitioners have claimed absorption in ONGC. With regard to 75 employees enlisted in Annexure - A who have been working with different contractors 8 in number, ONGC has disputed that these employees are covered by 13 categories in respect of which contract labour has been abolished. It has also been submitted that even if they are found to be covered, absorption of the employees is not possible because ONGC has to follow its own

regulations.

6. In Special Civil Application No. 3388/97 absorption has been claimed with regard to 22 employees listed in Annexure - A who are working with two contractors and these employees according to ONGC are engaged in the work of loading/unloading of liquid hydro carbon. But according to the petitioners they belong to 13 categories in respect of which the contract labour has been abolished.

7. In Special Civil Application No. 3517/97 absorption has been claimed with regard to 69 employees listed in Annexure - A who are working with 6 different contractors and according to the petitioners they are working in 13 categories in respect of which the contract labour has been abolished. ONGC has disputed that all of them do not belong to the categories which have been abolished for the purpose of contract labour.

8. In Special Civil Application No.2574/97 absorption has been claimed with regard to 65 employees out of which 38 employees are listed in Annexure - A and 27 employees are listed in annexure A-1 and these 65 employees are working with two different labour contractors and they belong to categories of sweepers and cleaners and watch and ward and absorption with regard to these 65 employees is claimed. But ONGC has disputed the fact that these employees are covered by categories in respect of which contract labour has been abolished and applicability of the notification dated 9-12-96 itself has been disputed. It has been submitted that at best the notification applies to buildings part only.

9. In Special Civil Application No. 3522/97 the absorption of 25 employees working with two contractors as sweepers/cleaners/watch and ward etc. has been claimed. This claim has been disputed by O.N.G.C. on the same grounds as in Special Civil Application No. 2574/97.

10. I have heard learned Counsel for the parties at length and having gone through the pleadings of the parties, I find that there are certain disputed questions about categorization of the employees on which depends the claim for absorption in ONGC. As a question of law I do find that controversy is covered by the decision of the Supreme Court in case of All India Statutory Corporation Ltd. Vs. United Labour Union & Ors. reported in 1996 (9) SCALE P. 70 also reported in AIR 1997 SC. 645. Those employees who belong to categories

which are covered by the notifications dated 8-9-94 and 9-12-96 may be found to be entitled for absorption in ONGC in case they satisfy other conditions which are incorporated in the Regulations of ONGC with regard to service and employment.

11. According to Mr. Pakale it is not necessary for absorption of such employees on contract labour to fulfil the requirements under the regulations of O.N.G.C. He submits that all the employees should be straightway absorbed notwithstanding their eligibility for the particular posts on which they have been working and seek to be absorbed. In Court's opinion as and when the question of absorption from contractual employment to the principal employer like the corporation such as O.N.G.C. arises, the requirements of service regulations cannot be given a go-bye. Protection is given in case of abolition of contract labour so that the employees are not made to suffer merely because they have worked with the contractor but that will not absolve them from minimum requirements under regulations, if any, with regard to eligibility for the post on which absorption is to be made. All that is dispensed with in such cases as a result of abolition of the contract labour is the requirement of following the process of recruitment. Even in services which are services of status under the Rules made under the proviso to Article 309 of the Constitution of India the persons who are appointed before constitution of service and as and when there is an initial constitution of service under the services rules made under proviso to Article 309 the process of screening is provided in the scheme of service rules itself and such employees who have worked in that service prior to the initial constitution of service have to undergo process of screening with reference to eligibility requirement as on a particular date fixed under such Rules made under proviso to Article 309. Therefore, the contention raised by Mr. Pakale in this regard militates against the basic tenets of service jurisprudence and I have no hesitation in holding that those employees who are found to be covered under the categories in respect of which the contract labour has been abolished vide two notifications as aforesaid will have to conform to the eligibility requirements under service regulations of ONGC.

12. Now the only controversy which remains, is about the factual aspect as to whether the employees sought to be absorbed as a result of abolition of contract labour are covered by the categories in respect of which the contract labour has been abolished. Whereas it has been

seriously disputed as to whether all the employees in respect of whom absorption is claimed are covered by the categories mentioned in two notifications or not and such factual questions cannot be gone into in these proceedings under Article 226 of the Constitution of India, it was suggested at the Bar that the Regional Labour Commissioner (Central), Ahmedabad may be directed to verify with regard to different set of the employees concerned in all these five Special Civil applications as to whether they are covered by the categories of employment in respect of which the contract labour has been abolished vide respective notifications dated 8-9-1994 or 9-12-1996 as the case may be or not.

13. The Regional Labour Commissioner ( Central ), Ahmedabad, is directed to proceed accordingly to verify the cases of concerned employees as to whether they belong or not belong to the categories in respect of which the contract labour has been abolished.

- (i) Two separate lists shall be prepared by him - one of those who belong and other of those who do not belong to such categories. In the first list he would also indicate the date of notification either 8-9-1994 or 9th December 1996 as the case may be, against each employee included in the first list.
- (ii) The respondents shall make available the record in respect of all these concerned employees and other relevant papers on the basis of which it may be determined as to whether the employees sought to be absorbed in O.N.G.C. are covered or not by the categories for which contract labour has been abolished vide the notifications dated 8-9-94 and 9-12-96 as above.
- (iii) It will be open for the Regional Labour Commissioner (Central), Ahmedabad to follow any procedure for this purpose which he deems fit to arrive at the conclusion and it will also be open for the parties to produce materials before the Regional Labour Commissioner (Central), Ahmedabad in support of their cases in this regard.
- (iv) The Regional Labour Commissioner (Central), Ahmedabad shall hear the petitioners as well as ONGC before preparing its final report in this regard and it will be open for both the sides to raise all just and reasonable objections before him.

- (v) The Regional Labour Commissioner (Central), Ahmedabad shall send copy of this report to ONGC as well the employees and such report shall be prepared and communicated by him at the earliest but in no case later than 8th December, 1997.
- (vi) On the basis of the report of the Regional Labour Commissioner (Central), Ahmedabad, those employees who are found to be covered by the categories under the Notifications dated 8-9-1994 and 9-12-1996 shall be taken up for absorption by ONGC having due regard to the requirements of eligibility under the Rules and Regulations of ONGC and appropriate orders shall be passed and served upon concerned employees on or before 31-12-1997. In case the O.N.G.C. decides to challenge the report of the Regional Labour Commissioner (Central), Ahmedabad, it will be open for the O.N.G.C. to indicate in such orders as above that these orders are subject to the result of such challenge.
- (vii) It will also be open for the concerned employees and the petitioners to challenge the decision of the O.N.G.C. on the question of eligibility with reference to service regulations in case any employee, found to be covered by the Notifications dated 8-9-1994 or 9-12-1996 is aggrieved and is denied absorption by O.N.G.C.
- (viii) As regards the employees who are not found to be covered by the Notifications dated 8-9-1996 and 9-12-1996 for the purpose of absorption in ONGC on account of abolition of contract labour it will be open for the concerned petitioners or such employees to challenge that part of the report of the Regional Labour Commissioner (Central), Ahmedabad in appropriate forum in accordance with law.
- (xi) Till the report is made by the Regional Labour Commissioner (Central) Ahmedabad and thereupon the action is taken and appropriate orders are issued by the ONGC with regard to absorption or otherwise and thereafter for a period of one month i.e. till 31-1-1998 no action shall be taken and no order shall be passed to the prejudice of other employees who are not absorbed and who are not found to be covered by the Notifications dated 8-9-97 and 9-12-1996 by the

Regional Labour Commissioner (Central), Ahmedabad  
and their position and status as on today shall  
be maintained till 31-1-1998, save in cases of  
misconduct or indiscipline.

(x) After 31-1-1998 also if at all service of any  
employees are sought to be terminated, the same  
shall not be done, except in accordance with law.

14. All these five Special Civil Applications are  
decided and partly allowed in terms as aforesaid and rule  
is made absolute in the terms as aforesaid in each of  
these five Special Civil Applicatons, with no order as to  
costs.

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